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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--------------------------------------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 10/004,090 | 10/23/2001 | Michael Kowalchik | EMR-00301 | 9342 |
| 25181 | 7590 | 12/02/2004 | EXAMINER | |
| FOLEY HOAG, LLP PATENT GROUP, WORLD TRADE CENTER WEST 155 SEAPORT BLVD BOSTON, MA 02110 | | | CHACE, CHRISTIAN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2187 | |

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------|------------------------|---------------------|
| Advisory Action | Application No. | Applicant(s) |
| | 10/004,090 | KOWALCHIK ET AL. |
| | Examiner | Art Unit |
| | Christian P. Chace | 2187 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) The period for reply expires 1 months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: ____.

3. Applicant's reply has overcome the following rejection(s): _____.
4. Newly proposed or amended claim(s) ____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-9,12-20,22-27.

Claim(s) withdrawn from consideration: _____.

8. The drawing correction filed on ____ is a) approved or b) disapproved by the Examiner.

9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.

10. Other: See Continuation Sheet



Christian P. Chace
Examiner
Art Unit: 2187

Continuation of 10. Other: With respect to applicants' submission of an IDS on 27 July 2004, as applicants admit, it was received after the final rejection was sent, and no statement under 37 CFR 1.97(e) and no fee were received, pursuant to MPEP 609. A copy of the 1449 associated with same is enclosed with a line drawn through the references to indicate that they have not been considered by examiner.

With respect to the statement at page 7 of the instant submission claiming that a power of attorney to prosecute will be submitted, examiner respectfully reminds applicants that it must actually be submitted and entered before examiner can communicate with the representative listed therein. Accordingly, examiner has attempted to contact the attorneys of record to ask them to remind applicants to correct the power of attorney, should it, in fact, be desired.

As to applicants' arguments with respect to the rejections of the claims (1-7 and 10-29 under 35 USC 102 and 8-9 under 35 USC 103), specifically that the cited prior art does not anticipate the claim language, even as amended, examiner respectfully disagrees. Applicants have included the subject matter of claims 10-11 into claim 1, 11 and 21 into claim 20, and 28 and 29 into claim 24, and then canceled claims 10-11, 21, and 28-29.

Applicants continue by traversing the rejection of former claim 11, now incorporated into claim 1, by arguing that Brant et al do not teach a data storage device having a controller configured to implement a RAID scheme that is independent of a hierarchically higher RAID controller that sends the data storage device RAID data. Examiner respectfully disagrees, and refers applicants to the final rejection of claim 11 in the previous Office action. It is noted that with respect to the other independent claims, applicants rely on this argument with respect to claim 1 as well.

In column 5, lines 30-40, Brant et al recite, "Further down the hierarchy, inexpensive controllers coupled to an array in RAID1 configurations can yield high I/O rates. Still further down the hierarchy, RAID5 configurations reduce the cost of protected storage with small redundancy groups and higher capacity disk." In column 6, lines 29-31, Brant et al recite, "Conversely, an entirely separate high capacity data storage device can independently provide the subsystem 25 functions." Column 6 continues by reciting, in lines 51-53, that "Typically, subsystem 25 includes its own controller to handle data exchanges coordinated with controller 20" (RAID cache controller). Clearly, Brant et al teach the instant claim language. .



Christian P. Chace
Examiner, AU 2187